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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE:)	Case No.: 3:15-md-02672-CRB
VOLKSWAGEN "CLEAN DIESEL"	)	AMENDED COMPLAINT FOR
MARKETING, SALES, PRACTICES,	)	DAMAGES AND RESTITUTION
AND PRODUCTS LIABILITY)	
LITIGATION	)	1. VIOLATIONS OF THE TEXAS
	)	DECEPTIVE TRADE PRACTICES
	)	ACT (Tex. Bus. & Comm. Code
	)	section 17.41 <i>et seq.</i>)
THIS DOCUMENT RELATES TO:	)	2. BREACH OF EXPRESS
	)	WARRANTY
<i>Christine Taylor v. Volkswagen Group of</i>	)	3. BREACH OF IMPLIED
<i>America, Inc., a corporation;</i>	)	WARRANTY
<i>VOLKSWAGEN</i>)	
<i>AKTIENGESELLSCHAFT, a business</i>	)	4. BREACH OF THE IMPLIED
<i>entity, form unknown; and DOES 1-20,</i>	)	WARRANTY OF FITNESS FOR A
<i>inclusive.</i>	)	PARTICULAR PURPOSE
	)	5. BREACH OF CONTRACT
Case No: 3:17-cv-02381-CRB	)	6. FRAUD
	)	7. NEGLIGENT
	)	MISREPRESENTATION
	)	Initial Complaint Dated: May 5, 2016
	)	UNLIMITED CIVIL ACTION

INTRODUCTION

Plaintiff Christine Taylor (“Plaintiff”) alleges as follows against Defendants Volkswagen Group of America, Inc., (hereinafter “VGoA” and/or “Defendants”), Volkswagen Aktiengesellschaft (hereinafter “VW AG” and/or “Defendants”), and DOES 1 through 20, inclusive, on information and belief, formed after an inquiry reasonable under the circumstances:

PARTIES, JURISDICTION, AND VENUE

1. At all times mentioned in this Amended Complaint, Plaintiff Christine Taylor was and is a resident of the County of Archer, State of Texas.

2. Defendant Volkswagen Group of America, Inc., is a New Jersey corporation authorized to do business in Texas. At all times mentioned herein defendant engaged in the business of marketing and selling cars by and through authorized Volkswagen dealerships in Texas.

3. Defendant Volkswagen Aktiengesellschaft, which conducts business as and under the name Volkswagen Group of American, is a German corporation organized and existing under the laws of Germany and with its principal place of business in Wolfsburg, Germany.

4. VW AG is an automotive company that manufactures and sells vehicles under the Volkswagen, Audi, Porsche and other brand names with operations in approximately 150 countries, including the United States. In the first half of 2015, VW AG surpassed Toyota as the world’s largest automaker by sales, selling 5.04 million vehicles in the first six months of the year.

5. VW AG is the parent corporation of VGoA. VW AG, independently and/or through its wholly owned subsidiaries, conducts substantial business in the State of Texas and throughout the United States. Defendants - individually and/or collectively - design, develop, manufacture, market, sell, lease, warrant, service, and repair motor vehicles of various models, including the Subject Vehicle.

6. Plaintiff is informed and believes and on that basis alleges that

1 defendants Does 1 through 20, inclusive, are in some manner responsible for the acts,
2 occurrences and transactions set forth herein and are legally liable to Plaintiff and/or
3 they are the alter-ego of the Defendants named herein. Plaintiff will seek leave to
4 amend this Amended Complaint to set forth the true names and capacities of the
5 fictitiously named Defendants together with appropriate charging allegations when
6 ascertained.

7 7. Plaintiff is informed and believes and thereon alleges that all acts of
8 corporate employees as hereinafter alleged were authorized or ratified by an officer,
9 director or managing agent of the corporate employer.

10 8. Plaintiff is informed and believes and on that basis alleges that at all
11 times mentioned herein each defendant whether actually or fictitiously named herein,
12 was the principal, agent (actual or ostensible) or employee of each other defendant
13 and in acting as such principal or within the course and scope of such employment or
14 agency, took some part in the acts and omissions hereinafter set forth by reason of
15 which each defendant is liable to Plaintiff for the relief prayed for herein.

16 9. Personal jurisdiction over VW AG is proper because VW AG
17 purposefully availed itself of the privilege of conducting activities within the State of
18 Texas with the expectations that its fraudulent vehicles would be purchased by Texas
19 consumers, thereby giving rise to the underlying controversy. Such purposeful
20 availment and activities within and related to the State of Texas include, but are not
21 limited to: (1) Defendants' contractual relationships discussed below which give rise
22 to the source, supply, manufacturing, production, importation, research and testing,
23 analyzing, processing, distribution, advertising, marketing and sale of Plaintiff's
24 vehicle; (2) agreements between Defendants and entities, institutions, and
25 laboratories within the State of Texas regarding Defendants' fraudulent vehicles; (3)
26 marketing and advertising of the fraudulent vehicles to Texas citizens including
27 Plaintiff; (4) and other actions targeted to the State of Texas to be obtained through
28 discovery and other means.

1 10. VW AG acted both directly and indirectly to (1) transact business in
2 Texas; (2) supply services or things in Texas; (3) cause tortious injury by an act or
3 omission in Texas; and (4) cause tortious injury in Texas by an act or omission
4 outside Texas.

5 11. Personal jurisdiction over VW AG is further proper because VW AG's
6 direct contacts with the state of Texas form the basis of the fraud claims alleged in
7 this lawsuit. Texas contacts of VWGoA concerning the fraud that forms the basis of
8 this lawsuit can be imputed to VW AG pursuant to the agency relationship between
9 and among the Defendants as alter egos, co-conspirators, and/or joint venturers.

10 12. As set forth below, VWGoA is the agent, both actual and implied, of VW
11 AG and was VW AG's agents as to the marketing, promotion, sale, and distribution of
12 the vehicle Plaintiff purchased in Texas. VWGoA carried out the marketing,
13 promotion, sale, and distribution of the vehicle Plaintiff purchased as VW AG's
14 agent. VWGoA's actions in, and contacts with, Texas can be imputed to VW AG
15 because of the agency relationship between and among those parties.

16 13. VW AG used VWGoA as its alter ego for the marketing, promotion, sale
17 and distribution of the vehicle Plaintiff purchased in Texas. VWGoA, a wholly owned
18 subsidiary of VW AG, exists solely to promote the sale and distribution of VW AG
19 products, including the vehicle Plaintiff purchased. VWGoA's actions in, and contacts
20 with, Texas can be imputed to VW AG pursuant to an alter ego theory.

21 14. At all relevant times herein, VW AG and VWGoA operated a joint
22 venture (the "Joint Venture") in Texas in which they agreed to assist each other in
23 designing, importing, distributing, marketing and selling certain motor vehicles in
24 Texas, including the vehicle Plaintiff purchased that is at issue in this lawsuit.

25 15. At the critical stages in the foregoing activity, Defendants acted as agents
26 for each other in pursuing their common goal of selling their fraudulent vehicles,
27 including the vehicle Plaintiff purchased. Each Defendant maintained a voice in the
28 control and management of the Joint Venture, and each shared in the profits and

1 losses of the Joint Venture. VWGoA's actions in, and jurisdictional contacts with,
2 Texas are imputed to VW AG by virtue of the Joint Venture.

3 16. VW AG's relationship with VWGoA goes far beyond that of a mere
4 parent-subsidary relationship. VW AG exercises significant and total control over
5 VWGoA's day-to-day operations, and exercised total control over VWGoA in
6 directing and carrying out the fraud that forms the basis of this lawsuit. Indeed, VW
7 AG's control is so persistent and total that numerous courts across the country have
8 found that VWGoA is the proper agent for service of process for VW AG.

9 17. Even if there was no parent-subsidary relationship between VW AG and
10 VWGoA, personal jurisdiction would still be proper over VW AG because of VW
11 AG's own conduct with regard to the fraud that forms the basis of this lawsuit. VW
12 AG sold to VWGoA, both directly and indirectly, their fraudulent vehicles with the
13 knowledge and intent that VWGoA would resell and distribute them to Plaintiff and
14 throughout the United States. Further, VW AG worked with and directed VWGoA to
15 advertise and market their fraudulent vehicles to consumers, such as Plaintiff. VW
16 AG used its own employees and directed VWGoA to formulate and disseminate false
17 information about their fraudulent vehicles. VW AG not only directed VWGoA
18 employees to carry out the fraud, but VW AG sent its own employees to carry out and
19 perpetuate the fraud that forms the basis of this lawsuit. VW AG required VWGoA to
20 use false information about their fraudulent vehicles in marketing campaigns. VW
21 AG employees developed and promoted these campaigns.

22 18. The entire Volkswagen "Dieselgate" scandal occurred as a result of VW
23 AG's focused efforts to increase its market share in the United States. In 2007, VW
24 AG set goals for Volkswagen to become a world leader in automobile manufacturing
25 including tripling of the number of vehicles sold in the United States. In order to sell
26 their fraudulent vehicles in the United States and Texas, VW AG appointed its
27 wholly-owned subsidiary, VWGoA, to transact and manage the business affairs of
28 importing, distributing, marketing and selling VW AG vehicles, including the vehicle

1 Plaintiff purchased. Pursuant to this agreement, VW AG sold the fraudulent vehicles
2 along with hundreds of thousands of other vehicles to VWGoA throughout the United
3 States and Texas. All of this was accomplished, including the sale of the fraudulent
4 vehicle to Plaintiff, pursuant to an Importer Agreement between VW AG and
5 VWGoA (the “VW Importer Agreement”). This VW Importer Agreement was not an
6 arms-length transaction. VW AG required VWGoA to enter into the agreement.

7 19. The VW Importer Agreement appoints VWGoA as the sole authorized
8 U.S. importer and distributor of vehicles manufactured by VW AG. VWGoA agreed
9 to assume responsibility for the importation, distribution, marketing and selling of
10 Volkswagen vehicles, including the vehicle Plaintiff purchased. VWGoA is the sole
11 authorized U.S. importer and distributor of the fraudulent vehicles, as well as other
12 vehicles manufactured by VW AG. Further, VWGoA obtained the Certificates of
13 Conformity that allowed VW AG to sell the fraudulent vehicles, and all their vehicles,
14 in the United States.

15 20. The VW Importer Agreement divides functions and promotes the
16 common purpose of selling Volkswagen vehicles, including the fraudulent vehicles,
17 throughout the United States. Pursuant to these agreements, VW AG had the right
18 and power to control the means and methods by which VWGoA performed its work
19 in marketing, sales, promotion, and public relations and did in fact exercise such
20 power and control over VWGoA. VW AG oversaw and controlled all of the details
21 of VWGoA’s marketing, sales, promotion and public relations concerning the
22 fraudulent vehicles.

23 21. The VW Importer Agreement required VWGoA to establish a dealer
24 network based on VW AG’s schedule and conditions. It was this extensive dealer
25 network that allowed VW AG to sell over 480,000 of the fraudulent vehicles to
26 Plaintiff and other consumers throughout the United States. VWGoA established this
27 dealer network at the direction, and with the direct participation, of VW AG.

28 22. VW AG appointed VWGoA to transact and manage the business affairs

1 of importing, distributing, marketing and selling the fraudulent vehicles as well as
 2 other Volkswagen vehicles. VW AG and VWGoA divided functions and worked
 3 together for the common purpose of selling Volkswagen vehicles, including the
 4 vehicle Plaintiff purchased. Pursuant to their agreements, VW AG had the right and
 5 power to control the means and method by which VWGoA performed its work in the
 6 marketing, sales, promotion and public relations concerning the fraudulent vehicles.
 7 VW AG could not conduct business in the United States or Texas, either directly or
 8 indirectly, without the assistance of VWGoA. VW AG controls the methods and
 9 details of VWGoA's work to such an extent that VWGoA is the agent of VW AG.

10 23. The following additional facts further demonstrate the total control VW
 11 AG exercises over VWGoA, either directly or indirectly, making the subsidiary
 12 nothing more than a corporate division of VW AG:

- 13 • VW AG owns 100% of the outstanding stock of VWGoA;
- 14 • VW AG elects and controls the board of directors and the chairman of
 15 the board of directors of VWGoA in Virginia;
- 16 • VWGoA is the sole authorized U.S. importer and distributor of
 17 vehicles manufactured by VW AG;
- 18 • VWGoA officials participated in the obtaining of the Certificates of
 19 Conformity that allowed VW AG to sell their vehicles, including the
 20 vehicle Plaintiff purchased.
- 21 • VWGoA is required to and does in fact promote the image and good
 22 reputation of VW AG, which was done in furtherance of the fraud
 23 that forms the basis for this lawsuit;
- 24 • VWGoA is prohibited by VW AG from modifying any of VW AG's
 25 vehicles, including the fraudulent vehicles, without their prior written
 26 approval;
- 27 • VW AG is authorized, both directly and indirectly, by VWGoA to
 28 control the means and methods by which VWGoA marketed and sold

VW AG's vehicles, including the vehicle Plaintiff purchased. VW AG exercises this control at and through VWGoA's corporate headquarters;

- VWGoA is prohibited by VW AG from selling, marketing or promoting vehicles manufactured by companies other than VW AG and Audi AG;
- VWGoA is required by VW AG to sell and service used cars at its U.S. dealerships and to take used cars in trade;
- VW AG determines, both directly and indirectly, the warranty offered on the cars sold by VWGoA, including the warranty offered on the fraudulent vehicles;
- VW AG makes no warranty (express or implied) as to the products supplied by VW AG to VWGoA;
- VWGoA is required by VW AG to lease cars;
- VWGoA is required to establish marketing and public relations objectives and strategies within the guidelines established by VW AG. These objectives and strategies using false information to market the fraudulent vehicles were established by VWGoA;
- VW AG controls VWGoA's advertising content as well as how much money it spends on advertising including advertising concerning the fraudulent vehicles. Such advertising content for the fraudulent vehicles was developed by VWGoA.
- VWGoA is required by VW AG to make warranty repairs on all VW AG vehicles including the fraudulent vehicle Plaintiff purchased in accordance with VW AG's guidelines and procedures;
- VWGoA is required by VW AG to use the workshop tools and equipment specified by VW AG to service vehicles, including the fraudulent vehicle Plaintiff purchased;

- 1 • VWGoA is required by VW AG to perform all repairs and
2 maintenance work in accordance with VW AG's guidelines and
3 procedures;
- 4 • VWGoA is required to perform its pre-delivery inspections of VW
5 AG's vehicles, including the fraudulent vehicle Plaintiff purchased
6 according to VW AG's instructions and guidelines;
- 7 • VWGoA is required to ensure that its standardized data processing
8 and communications programs are compatible with VW AG's
9 standardized data processing and communications programs;
- 10 • VWGoA is required to maintain a modern computer communications
11 system for processing warranty claims that is compatible with VW
12 AG's system to enable VW AG to track warranty cost projections;
- 13 • VWGoA is required to submit to VW AG on a regular basis
14 information requested by VW AG concerning business data, warranty
15 and warranty related matters, enactments or changes of any relevant
16 laws and regulations, including taxes and customs and any other
17 matters which may affect any aspect of their import agreement;
- 18 • VWGoA is required to inform VW AG of any modification of U.S.
19 laws which may affect the manufacturing of vehicles and regulations
20 governing the use thereof including safety requirements.
- 21 • VWGoA provides regular reports to VW AG on the development of
22 the market generally and its business activities in the U.S., including
23 reports on the fraudulent vehicles;
- 24 • VWGoA and VW AG determined the profit margins VWGoA
25 received on the sale of the fraudulent vehicles, as well as its sale of
26 other Volkswagen cars; and
- 27 • VWGoA cannot, without written approval of VW AG, enter into any
28 agreements or arrangements to promote the sale of goods or services

1 from its business premises unless such activities do not affect in any
2 regard VW AG's business interests.

3 24. One of the many ways that VW AG directly managed and controlled
4 VWGoA's affairs, including the fraud that forms the basis for this lawsuit, is through
5 an expatriate program wherein VW AG officers and employees were assigned to
6 work for VWGoA at VWGoA's corporate headquarters. VW AG employees came to
7 VWGoA's corporate headquarters and directed, controlled, and participated in the
8 fraud that forms the basis of this lawsuit. VW AG's expatriate officers and employees
9 oversaw VWGoA's operations including its marketing, promotion, and distribution of
10 the fraudulent vehicles. For example, VW AG used the expatriate program to appoint
11 Michael Horn as VWGoA's CEO. VW AG used Michael Horn and other German
12 expatriates to manage and control VWGoA's operations, including the distribution of
13 the fraudulent vehicle to Plaintiff and the marketing and advertising of the fraudulent
14 vehicle to Plaintiff. Further, VW AG trains and assigns VWGoA employees.

15 25. In furtherance of the "Dieselgate" fraud, VW AG developed technical
16 service "flash" software that was designed to help hide the presence of the defeat
17 device. VW AG labeled the software as an "update," provided this update to
18 VWGoA, and directed VWGoA to install the software on their fraudulent vehicles
19 unbeknownst to U.S. consumers, including Plaintiff.

20 **FACTUAL ALLEGATIONS**

21 26. On or about September 12, 2013, Plaintiff purchased a 2009 Volkswagen
22 Jetta (hereinafter "Car" and/or "Subject Vehicle"), Vehicle Identification Number
23 3VWRL71k39M040054, from Defendants' certified dealership, Herb Easley, located
24 at 1125 Central Freeway, Wichita Falls, TX 76306, for a total sale price of
25 \$10,842.19.

26 ***Defendants' Representations***

27 27. This case addresses nothing less than one of the most deliberate and blatant
28 frauds to be perpetrated on the consumer marketplace and on a sovereignty by an

1 international automotive conglomerate in history. It arises from Defendants', VGoA and
2 VW AG, September 21, 2015 admission that, for more than seven years, they had been
3 intentionally, deliberately, and maliciously designing, manufacturing, and distributing
4 hundreds of thousands of their purportedly "clean diesel" car with a software algorithm
5 embedded in the engine control module ("defeat device"). The sole purpose of this
6 algorithm was to detect when an emissions test was being conducted and to cause the
7 Subject Vehicle's emissions system to switch to an operating mode that would enable the
8 Subject Vehicle to appear to pass state and federal clean air emissions standards.

9 28. Defendants purposefully and intentionally breached the laws of the United
10 States, Texas, and the rules and regulations of the EPA by selling in the United States
11 Volkswagen and Audi vehicles, including the Subject Vehicle, that purposefully evaded
12 federal and state laws. As stated by Cynthia Giles, Assistant Administrator for the office
13 of Enforcement and Compliance Assurance at the EPA: "Using a defeat device in cars to
14 evade clean air standards is illegal and a threat to public health." Yet that is exactly what
15 Defendants did in their 2009-2015 Volkswagen and Audi CleanDiesel vehicles.¹

16 29. The window sticker attached to the Subject Vehicle advertised the car as
17 "good clean diesel fun."

18 30. Defendants represented that the 2.0L TDI engine, which was installed in
19 the Subject Vehicle, would outperform all other vehicles in miles per gallon and
20 would do so while emitting 25% fewer emissions into the air—fully compliant with
21 current emissions standards.

22 31. Unwilling and/or unable to design and manufacture the Subject Vehicle
23 so that it would meet these high standards in all conditions (during laboratory testing
24 and in real driving conditions, in the customer's hands), Defendants cheated by
25 installing a "defeat device" into the Subject Vehicle so that the Subject Vehicle would
26 appear to have the qualities and characteristics that Defendants represented when
27 laboratory tested. However, this "defeat device" deactivated the operation of the

28 ¹ See Sept. 18, 2015 EPA News Release.

1 emissions control system during normal operation of the Subject Vehicle. Because
2 Defendants cheated, the Subject Vehicle does not have the uses, benefits, qualities
3 and characteristics as represented by Defendants at the time Plaintiff purchased the
4 Subject Vehicle.

5 32. To obtain permission to sell the Subject Vehicle in the U.S., Defendants
6 applied for and obtained the Certificate of Conformity from the Environmental
7 Protection Agency of the United States Federal Government (“EPA”) and an
8 Executive Order from the California Air Resource Board (“CARB”). In those
9 applications, Defendants were required to, among other things, disclose all Auxiliary
10 Emissions Control Devices (“AECDs”) on the vehicles, *i.e.*, any engine function
11 which senses temperature, vehicle speed, engine RPM, or any other parameter for the
12 purpose of activating, modulating, or **deactivating** the operation of any part of the
13 emission control system. For each such AECD, Defendants were required to provide:
14 a written, detailed justification; the parameters the AECD sensors and controls; and a
15 rationale for why the AECD is not a “defeat device.” Defendants did not disclose the
16 “defeat device” on the applications. Defendants did not have legal permission to sell
17 the Subject Vehicle in the United States with the undisclosed “defeat device”. As
18 result Defendants deceived Plaintiff as to the certification and required approval of
19 the Subject Vehicle.

20 33. The Clean Air Act, enacted in 1970, is a comprehensive federal law that
21 regulates air emissions from stationary and mobile sources. 42 U.S.C. § 7401. et seq.
22 (1970). Congress determined that “the increasing use of motor vehicles . . . has
23 resulted in mounting danger to the public health and welfare.” CAA § 101(a)(2), 42
24 U.S.C. § 7401(a)(2). The Clean Air Act and the regulations under it, as well as state
25 regulations, were passed and are intended to reduce the emission of NO_x and other
26 pollutants, thereby protecting human health and the environment.

27 34. NO_x contributes to nitrogen dioxide, ground-level ozone and fine
28 particulate matter. When humans are exposed to nitrogen dioxide, they may be at a

1 greater risk for serious health dangers, including asthma attacks and other respiratory
2 illness requiring hospitalization. Ozone and particulate matter exposure have been
3 associated with premature death due to respiratory related or cardiovascular-related
4 effects. Children, the elderly and people with pre-existing respiratory illness are at an
5 elevated risk for adverse health consequences associated with these pollutants.

6 35. The Clean Air Act requires car makers to certify that vehicles sold in the
7 United States meet federal emissions standards. The EPA certifies conformity with
8 regulations to car makers for vehicles that satisfy emissions regulations. To be sold in
9 the United States, a vehicle must be certified by the EPA to comply with its regulations.

10 36. The Clean Air Act defines a “defeat device” as one “that reduces the
11 effectiveness of the emission control system under conditions which may reasonably
12 be expected to be encountered in normal vehicle operation use.” When a defeat
13 device is in place, it can bypass, defeat, or render inoperative elements of the
14 vehicle’s emission control system that are put in place to ensure compliance with the
15 Clean Air Act. Motor vehicles that are equipped with defeat devices cannot be
16 certified by the EPA.²

17 37. At the time of purchase, Plaintiff was unaware and Defendants: (1) did not
18 disclose that they fraudulently obtained the Certificate of Conformity and the Executive
19 Order, (2) did not disclose that they fraudulently obtained permission to sell the Subject
20 Vehicle in the United States, (3) did not disclose that they fraudulently marketed the
21 Subject Vehicle which was brought into the United States market illegally, and (4) did
22 not disclose that they fraudulently sold the Subject Vehicle with the “defeat device.” As
23 a result, Defendants misrepresented the source, sponsorship, approval and certifications
24 of the Subject Vehicle.

25 38. Defendants knew on the day they sold the Subject Vehicle to Plaintiff that
26 they had installed a “defeat device” which caused the Subject Vehicle to emit upwards
27 of 40 times more pollutants into the air than any other light duty car on the road.

28 ² EPA, Advisory Circular Number 24: Prohibition on use of Emissions Control Defeat Device (Dec. 11, 1972).

1 Defendants did not disclose this information to Plaintiff thereby deceiving Plaintiff.

2 39. Defendants knew on the day they sold the Subject Vehicle to Plaintiff
3 that the Subject Vehicle could not pass any emissions standards in the United States if
4 the “defeat device” were removed from the Subject Vehicle. Defendants did not
5 disclose this information to Plaintiff thereby deceiving Plaintiff.

6 40. Plaintiff was unaware that the “defeat device” was embedded in the
7 Subject Vehicle. Defendants concealed this information from Plaintiff thereby
8 deceiving Plaintiff.

9 41. In addition to defrauding the state and federal agencies responsible for
10 regulating car emissions, Defendants carried out a disgusting fraud on the American
11 car-buying public. It traded on the reputation for stellar engineering that Audi,
12 Porsche and Volkswagen enjoyed, by aggressively marketing the non-compliant
13 diesel engines to U.S. consumers as the product of environmentally-friendly German
14 advanced technology, thereby obtaining premiums for the cars on the basis of this
15 fundamentally dishonest and deceptive marketing.

16 42. Plaintiff relied upon this reputation, relied upon the representation that
17 the Subject Vehicle would legally pass emissions tests and relied upon the Monroney
18 sticker which advertised the car as “good clean diesel fun.”

19 43. Defendants issued a written warranty against the Subject Vehicle at the
20 time of Plaintiff’s purchase. The written warranty included an express warranty and
21 an implied warranty of merchantability under Texas law. Because the Subject Vehicle
22 could not pass any United States emissions test without the “defeat device,” the
23 Subject Vehicle was not merchantable on the day of purchase.

24 44. As detailed in the EPA’s Notice of Violation, sophisticated software in
25 the Volkswagen and Audi diesel vehicles sold by Defendants in the United States
26 detects when the vehicle is undergoing official emissions testing. The software is
27 designed to turn on all emissions controls during the test. The “defeat device” would
28 command the emissions system to run in this clean air mode ONLY when the engine

1 control module determined that the vehicle was being operated under the testing
2 conditions for emissions testing. At all other times, the engine control module would
3 command the emissions system to operate in such a way that the “clean diesel
4 vehicles” would, in fact, emit up to 40 times the quantity of nitrogen oxides allowed
5 for by emissions standards. The Subject Vehicle is one of hundreds of thousand of
6 automobiles introduced into the United States market that flagrantly violated state
7 and federal law regulating emissions standards.

8 45. Since 2008, Defendants claimed that the 2.0L TDI Clean Diesel engine
9 was a “fantastic power train” that “gives very good fuel economy” that “is also good
10 for the environment because it puts 25% less green house gas emissions than what a
11 gasoline engine would... [and is] clean enough to be certified in all 50
12 states.” (Statement of Volkswagen Group of America, Inc.’s Chief Operating Officer
13 Mark Barnes, to The Business Insider, October 9, 2009.)

14 46. Defendants broadly boasted about the performance and environmental
15 cleanliness of its 2.0 liter TDI engine systems used in Volkswagen and Audi diesel
16 vehicles. In an October 2008 press release, Defendants bragged:

17 The Jetta TDI is amongst the ten most fuel efficient vehicles
18 on the US market. In the recently published “Fuel Economy
19 Guide 2009” the EPA (Environmental Protection Agency)
listed the Jetta TDI in the top ten low consumption and low
emissions vehicles.

20 In the current edition of the publication, the Jetta 2.0L
21 CleanTDI introduced to the market two months ago is
22 praised particularly for its excellent consumption figures - it
23 has a fuel consumption of 5.7 litre per 100 kilometre.
24 Moreover, the Jetta Clean TDI also fulfills strident
25 California emission standards. This was achieved through
26 modifications within the engine and by implementing an
exhaust treatment system developed especially by
Volkswagen and which reduces nitrogen oxide emissions
(NOx) by up to 90 percent. The central element of the
exhaust treatment system is the NOx storage catalytic
converter.

27 47. In responding to critiques on how VWGoA planned to “re-brand
28 something dirty like a diesel as something that’s green,” VWGoA stated:

1 “The way we’ve gone about it is through a number of
2 communication pieces. Once of them we’ve used is TDI
3 Truth & Dare. It is a very good website that compares older
4 diesels versus the current TDI clean diesel. And one of the
5 things we do is put coffee filters over the exhaust pipes of
6 both cars. We let them run for five minutes and after they
7 are done, we take them off and the older diesel product (not
8 a VW diesel) has a round sooty spot on that coffee filter.
9 Ours is very clean. In fact, they actually make coffee out of
10 the filter that was attached to the Volkswagen clean diesel
11 tail pipe and they drink it.”

12 48. Defendants implemented a national marketing campaign to engage
13 consumer awareness and interest in their so-called “Clean Diesel Technology”.

14 49. From 2009 through 2015, Defendants spent hundreds of millions of
15 dollars to develop and place internet, television and print ads advertising the fuel
16 efficiency, performance and environmental hygiene of the vehicles, to rebrand diesel
17 as a clean-running, fuel-efficient, fun alternative to gas and hybrid competitors and to
18 associate the Volkswagen and Audi brands with progressive ideals, environmental
19 consciousness and innovation.

20 50. Defendants advertised their “clean diesel vehicles” in a commercial
21 using three elderly ladies using a white scarf up against the exhaust pipe and then
22 holding it up to purportedly show how “clean” the vehicle was due to their not being
23 soot on the scarf.

24 51. Defendants’ false advertising was effective. Defendants used this fraud
25 to allow Defendants to position themselves as the market leader in automotive diesel
26 sales in the United States, capturing 78% of the market by 2013, according to its own
27 statistics. Defendants also sold approximately 11,000,000 of the vehicles in
28 approximately 150 countries around the world. By 2015, Defendants became the
world’s largest automaker by sales, and by 2015 ranked eighth on the Fortune Global
500 list of the world’s largest companies.

52. In addition to Defendants’ strong marketing techniques to raise

1 consumer awareness of the TDI Clean Diesel Technology, Defendants also
2 emphasized the fuel efficiency of the TDI Clean Diesel. Defendants combined the
3 alleged proficiencies of the engine with claims that the “clean diesel vehicles” had a
4 greater mileage range on a single tank of gas than did the Toyota Prius, Mazda 3,
5 Honda Civic HF, Ford Focus SE, and Toyota Corolla S—at the same time that it
6 alleged the TDI was “90% cleaner than previous diesel engines.”

7 53. Defendants received several accolades based upon their deceptive
8 representations of what their “clean diesel vehicles” could do. Particularly, the VW
9 Jetta TDI and the Audi A3 TDI were named the 2009 Green Car of the Year and the
10 2010 Green Car of the Year, respectively. Defendants shamelessly trumpeted these
11 awards despite knowing their “clean diesel vehicles were not even compliant under
12 EPA or CARB emissions standards. Defendants even had the audacity to advertise
13 “*Promise kept*” when the 2015 Audi A3 diesel was also name the “2014 World Car of
14 the Year”—an honor that was revoked upon the world discovering the true nature of
15 Defendants’ “clean diesel vehicles.”

16 ***Defendants’ Deception Exposed***

17 54. In early 2014, the Center for Alternative Fuels, Engines and Emissions
18 (hereinafter “CAFEE”) at West Virginia University (“WVU”) was contracted by the
19 International Counsel on Clean Transportation to conduct testing of vehicles using a
20 portable emissions measurement system (“PEMS”) over test routes in the State of
21 California.

22 55. Two of the vehicles tested by CAFEE were a 2012 Volkswagen Jetta and
23 a 2013 Volkswagen Jetta (the “Test Vehicles”).

24 56. Based upon CAFEE’s testing using a PEMS, the Test Vehicles were
25 found to have greatly exceeded EPA emissions standards for NOx emissions.

26 57. CAFEE issued a report on May 15, 2014 titled, “In-Use Emissions
27 Testing of Light-Duty Diesel Vehicles in the United States” which alerted EPA and
28 CARB to the emissions issues with the Test Vehicles.

1 58. EPA and CARB opened an investigation to determine the discrepancy
2 between the emissions standards the Test Vehicles were certified as having versus the
3 PEMS test results.

4 59. In the year that followed, Defendants continued to maintain that the Test
5 Vehicles were compliant to emissions standards set by the EPA and CARB and
6 attempted to explain the discrepancies away by claiming technical and use issues at
7 play during the test performed by the PEMS.

8 60. Defendants went so far as to attempt to further hide their “defeat device”
9 by claiming to EPA and CARB that the emissions issue could be addressed through a
10 simple software recall.

11 61. EPA and CARB did not accept Defendants’ explanations for the higher
12 emissions it measured in Defendants’ “clean diesel vehicles” and confronted Defendants
13 with the threat of withholding all “Certificates of Conformity” and “Executive Orders” on
14 the 2016 TDI vehicles unless the emissions issue was satisfactorily explained.

15 62. On September 18, 2015, the EPA issued to Defendants a Notice of Violation.
16 The Notice explained the EPA’s allegations that Defendants installed sophisticated
17 software in the Volkswagen and Audi diesel vehicles sold by defendants in the United
18 States that detects when the vehicle is undergoing official emissions testing and turns full
19 emissions controls on only during the test. At all other times that the Vehicle is running,
20 however, the emissions controls are deactivated, meaning that pollution is freely released
21 into the environment at levels that exceed those allowed by federal and state laws and
22 regulations. The software produced and used by defendants falls under the legal
23 description of a defeat device, which is prohibited by the Clean Air Act.

24 63. The Notices of Violation applied to the following vehicles equipped with the
25 2.0L TDI clean diesel engine (herein referred to as the “clean diesel vehicles”):

26 //

27 //

28 //

Model Year	Make and Model(s)
2009	VW Jetta, VW Jetta Sportwagen
2010	VW Jetta, VW Jetta Sportwagen
2011	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
2013	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
2014	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
2015	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat

64. With Defendants’ backs against the wall, after years of lying about the nature of the purported “clean diesel vehicles”, on September 21, 2015, Defendants finally admitted to both EPA and CARB (and the world) that, beginning in 2009 and continuing through 2015, Defendants had designed, manufactured, and installed a “defeat device” for the purpose of bypassing, defeating, or rendering inoperative elements of its diesel vehicles’ emission control system.

65. Specifically, Defendants deliberately and knowingly installed a “defeat device” consisting of a software algorithm within the engine control module that was designed to sense when the vehicle was being tested for compliance with EPA emissions standards, based on various inputs, including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure.

66. Upon sensing that a “clean diesel vehicle” was being tested for emissions, the “defeat device” ran software to calibrate the “clean diesel vehicles” into a mode that would produce compliant emissions results.

67. What resulted was Defendants’ “clean diesel vehicles” would meet emissions standards in labs or testing stations but at all other times emit NO_x at up to 40 times the standard allowed under United States laws and regulations.

1 68. The Federal Clean Air Act makes it illegal “for any person to
2 manufacture or sell, or offer to sell, or install, any part or component intended for use
3 with, or as part of, any motor vehicle or motor vehicle engine, where a principal
4 effect of the part or component is to bypass, defeat, or render inoperative any device
5 or element of design installed on or in a motor vehicle or motor vehicle engine in
6 compliance with regulations under this subchapter, and where the person knows or
7 should know that such part or component is being offered for sale or installed for
8 such use or put to such use.” (42 U.S.C. § 7522(A)(3)(B); 40 C.F.R. § 86.1854-12(a)
9 (3)(ii)).

10 69. This software produced and used by Defendants is a defeat device as
11 defined by the Clean Air Act and is illegal. Selling cars with defeat devices that
12 allowed for higher levels of emissions than what was certified by EPA, and higher
13 levels than state and federal regulations allow, violated the Federal Clean Air Act and
14 state regulations and laws.

15 70. At all relevant times, in an effort to spur sales in the United States,
16 Defendants proudly touted the performance and reliability of their “clean diesel
17 vehicles” and their purported environmental leadership while also intentionally
18 targeting marketing to environmentally-conscious consumers.

19 71. From as early as 2007, internal documents relating to “Volkswagen’s
20 Opportunities with Clean Diesel” reflect Volkswagen’s determination to “OWN the
21 segment before the competition come to market” and “own ‘Clean Diesel’ the way
22 Toyota owns ‘Hybrid’.” Defendants’ marketing strategy focused on positioning “Clean
23 Diesel as [an] environmental halo over [the] VW brand” and making “environmental
24 conscience” the “centerpiece” of Defendants’ “innovations/technology story.”

25 72. Robert Bosch GmbH (“Bosch”), the world’s largest supplier of
26 automotive components based in Gerlingen Germany, provided Defendants the
27 software to install the defeat device in their “clean diesel vehicles”, and in 2007,
28 Bosch warned Defendants in writing that it would be illegal to use the software in

1 actual production cars—that Bosch would only provide the software to Defendants
2 for test purposes only, and not production vehicles that would be sold to the public.

3 73. Defendants therefore knew as early as 2007 that their “defeat device”
4 was completely and totally illegal, yet they continued to aggressively advertise and
5 sell “clean diesel vehicles” through claims of low emissions and high fuel economy.

6 74. Prior to his resignation as a result of the disclosure of the emissions
7 fraud, Volkswagen AG’s CEO Martin Winterkorn stated: “I personally am deeply
8 sorry that we have broken the trust of our customers and the public.”

9 75. Michael Horn, President and CEO of Volkswagen America reportedly
10 admitted on September 21, 2015:

11
12 As you have seen since Friday the EPA, the Environmental
13 Protection Agency, has issued a statement and reality that
14 Volkswagen Group manipulated engine software in our TDI
15 diesel cars, and we violated emissions standards. The CEO
16 of our parent company, Dr. Martin Winterkorn said
17 yesterday Volkswagen will fully cooperate with the
18 responsible agencies, and much much more important as I
19 see it he stated that he was personally and deeply sorry for
20 this - that Volkswagen has broken the trust of our customers,
21 and the public here in America. And lastly he stated that this
22 matter, and this is I think common sense, now this is the first
23 priority for him personally and for the entire [board]. So
24 let’s be clear about this: our company was dishonest with the
25 EPA and the California Air Resources Board, and with all of
26 you. And in my German words, we’ve totally screwed up.
27 We must fix those cars, and prevent this from ever
28 happening again, and we have to make things right - with
the government, the public, our customers, our employees,
and also very importantly our dealers. This kind of behavior
I can tell you out of my heart, is completely inconsistent
with our core values. The core values of our brand are
value, innovation, and in this context very importantly
responsibility: for our employees, for our stakeholders, and
for the environment. So it goes totally against what we
believe is right. Along with our German headquarters, we
are committed to do what must be done and to begin to
restore your trust. (Emphasis added.)

26 76. On September 9, 2016, James Robert Liang, a longtime VW AG engineer,
27 pleaded guilty to charges of conspiracy to defraud the United States, to commit wire
28 fraud, and to violate the Clean Air Act, in the case of *United States v. Liang*, Case No.

1 16-CR-20394 (E.D. Mich.). Mr. Liang admitted that he was one of the designers of the
2 Volkswagen diesel engine; that he pursued and planned the use of the “defeat device;
3 that he knew that his co-conspirators at Volkswagen were falsely and fraudulently
4 certifying to the EPA and CARB between 2007-2015 that the “clean diesel vehicles”
5 met United States emissions standards and complied with the Clean Air Act; that his co-
6 conspirators falsely and fraudulently told United States consumers, EPA, and CARB
7 that a voluntary recall in early 2015 was intended to “fix” the discrepancies between the
8 amounts of emissions detected in road testing and the amount detected in EPA standard
9 dynamometer testing, when in fact he and his co-conspirators knew that the update did
10 not remove the defeat device; and that he and his co-conspirators caused defeat device
11 software to be installed in the “clean diesel vehicles”.

12 77. By manufacturing and selling cars with “defeat devices” that allowed for
13 higher levels of emissions than were certified to the EPA, Defendants violated the Clean
14 Air Act, defrauded their customers, placed in commerce vehicles that were illegal to
15 drive on U.S. roadways, engaged in unfair competition and false advertising under state
16 and federal laws.

17 78. Moreover, Defendants’ fraud harmed not just the customers they duped
18 into buying their heavily polluting, not-so-clean diesels, but it harmed the environment.
19 Through seven years of fraud defendant put on the United States roadways over
20 483,000 cars that spewed up to 40 times the permitted level of NOx and other
21 pollutants. These emissions invariably have harmed the air quality and environment
22 and, as a result, harmed the United States and its citizens.

23 ***Plaintiff’s Injury***

24 79. Defendants knowingly and willfully installed a “defeat device” in the
25 Subject Vehicle in order to market and sell the Subject Vehicle as a fuel efficient,
26 clean diesel car.

27 80. Defendants knowingly and willfully sold the Subject Vehicle to Plaintiff
28 knowing the Subject Vehicle did not comply with any emissions regulations.

1 81. Plaintiff paid a premium to purchase the car. Plaintiff paid the premium
2 as a result of Defendants' false claims that the Clean Diesel engine system was
3 environmentally friendly, clean, efficient and EPA compliant. Plaintiff was harmed
4 because from the day Plaintiff drove the car off the lot, Plaintiff did not get what
5 Plaintiff paid for.

6 82. Plaintiff's loss in value on the Subject Vehicle is particularly acute
7 because Plaintiff did not want to own a car that polluted and harmed the environment.
8 Cleanliness was the core of Defendants' marketing efforts.

9 83. Defendants have been ordered by the EPA to recall the affected vehicles
10 and repair them so that they comply with EPA emissions requirements at all times
11 during normal operation. However, Defendants will not be able to make the "clean
12 diesel vehicles" comply with emissions standards without substantially degrading
13 their performance characteristics—including their horsepower and their efficiency. As
14 a result, even if Defendants are able to make the "clean diesel vehicles" EPA
15 compliant, Plaintiff will nonetheless suffer actual harm and damages because the
16 Subject Vehicle will no longer perform as it did when purchased and as advertised.
17 This necessarily results in a diminution in value of the Subject Vehicle.

18 84. Defendants knowingly and willfully sold the Subject Vehicle to Plaintiff
19 knowing the Subject Vehicle did not comply with any emissions regulations.

20 85. The Subject Vehicle did not have the characteristics, qualities, uses and
21 benefits as advertised by Defendants.

22 86. Defendants knowingly misrepresented the true quality of the Subject
23 Vehicle.

24 87. Defendants knew and concealed from Plaintiff the fact that Defendants
25 obtained the necessary Certificate of Conformity and the Executive Order certifications
26 through fraudulent means. Therefore, Plaintiff purchased a car which was not certified
27 in its true form, as represented by Defendants.

28 88. Defendants acted, used, or employed fraud, false pretenses, false promises,

1 misrepresentations, misleading statements or deceptive practices, with the intent that
2 Plaintiff rely thereon in connection with the sale of that merchandise.

3 89. Defendants, with the intent to sell, advertised materials assertions,
4 representations or statements of fact regarding the vehicle which were untrue,
5 deceptive, or misleading.

6 90. Defendants engaged in a deceptive trade practice in their course of
7 business by causing likelihood of confusion or of misunderstanding as to the source,
8 sponsorship, approval, or certification of the goods or services sold.

9 91. Defendants engaged in a deceptive trade practice in their course business
10 by representing that goods or services have sponsorship, approval, characteristics,
11 ingredients, uses, benefits, or quantities that they do not have.

12 92. Defendants engaged in a deceptive trade practice in their course business
13 by representing that goods or services are of a particular standard, quality, or grade, or
14 that goods are of a particular style or model, when they were in fact of another.

15 93. Defendants engaged in a deceptive trade practice in their course business
16 by advertising goods or services with the intent not to sell them as advertised.

17 94. Defendants engaged in a deceptive trade practice in their course business
18 by engaging in other conduct which similarly creates a likelihood of confusion or of
19 misunderstanding.

20 95. Defendants committed fraud against Plaintiff.

21 96. Defendants made negligent misrepresentations that Plaintiff relied upon.

22 97. Defendants breached express and implied warranties.

23 98. Defendants caused Plaintiff to purchase a vehicle that Plaintiff would not
24 have otherwise purchased had Plaintiff known of the true nature of the Subject Vehicle
25 and Plaintiff spent additional money on the Subject Vehicle for upkeep and repairs.

26 99. As a result of all of the acts, individually and together, as outlined herein,
27 Defendants have caused Plaintiff damages.

SPECIFIC ALLEGATIONS

FIRST CAUSE OF ACTION

Violations of the Texas Deceptive Trade Practices Act

Tex. Bus. & Comm. Code section 17.41 *et seq.*

100. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs in this Amended Complaint as if set forth herein verbatim.

101. Plaintiff is a consumer as defined by the Texas Deceptive Trade Practices Act (“DTPA”). Tex. Bus. & Comm. Code section 17.45(4).

102. The Subject Vehicle constitutes a “good” as defined by the DTPA. Tex. Bus. & Comm. Code section 17.45(1).

103. Defendants are “persons” as defined by the DTPA. Tex. Bus. & Comm. Code section 17.45(3).

104. Defendants engaged in trade and commerce as defined by the DTPA in the purchase transaction of the Subject Vehicle to Plaintiff. Tex. Bus. & Comm. Code section 17.45(6).

105. Pursuant to the DTPA, the following unfair methods of competition and unfair or deceptive acts or practices are prohibited pursuant to section 17.46: (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services; (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another; (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not; (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; (9) advertising goods or services with intent not to sell them as advertised; (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; and (24) failing to disclose information

1 concerning goods or services which was known at the time of the transaction if such
2 failure to disclose such information was intended to induce the consumer into a
3 transaction into which the consumer would not have entered had the information been
4 disclosed.

5 106. The DTPA also prohibits the use or employment of a false, misleading,
6 or deceptive act or practice that is a breach of an express or implied warranty in
7 violation of Texas Business and Commerce Code §17.50(a)(2); and the use or
8 employment of a false, misleading, or deceptive act or practice that is an
9 unconscionable action or course of action in violation of Texas Business and
10 Commerce Code §17.50(a)(3).

11 107. Plaintiff also sent Defendants, via certified return receipt mail, a notice
12 and demand letter pursuant to Tex. Bus. & Comm. Code section 17.505. Defendants
13 have failed to repurchase or in any other way effectively correct their violations of
14 Texas law.

15 108. Plaintiff seeks economic and punitive damages under the Texas
16 Deceptive Trade Practices Act for violation of Tex. Bus. & Comm. Code sections
17 17.46(b)(2), (3), (5), (7), (9), (12), and (24); 17.50(a)(2); and 17.50(a)(3).

18 109. Plaintiff alleges that Defendants violated the DTPA in the following
19 manner: (1) causing confusion or misunderstanding regarding the approval,
20 characteristics, ingredients, uses, benefits, or quantities of the Subject Vehicle, (2)
21 causing confusion or misunderstanding regarding the standard, quality, or grade of the
22 Subject Vehicle, (3) advertising the Subject Vehicle with intent not to sell them as
23 advertised; (4) misrepresenting the rights, remedies, or obligations which Subject
24 Vehicle does not have or involve, or which are prohibited by law; and failing to
25 disclose information concerning the Subject Vehicle which was known at the time of
26 the transactions, the purpose of which was to induce Plaintiff into a transaction into
27 which Plaintiff would not have entered had the information been disclosed.

28 110. Defendants' aforementioned acts or omissions constitute a producing

1 cause of economic damages to Plaintiff.

2 111. Since the acts or omissions of the Defendants were committed
3 knowingly, Plaintiff is entitled to up to three times the amount of Plaintiff's economic
4 damages, pursuant to Tex. Bus. & Comm. Code section 17.50(b)(1).

5 112. Under Tex. Bus. & Comm. Code section 17.50(d), if Plaintiff is the
6 prevailing party, Plaintiff shall recover reasonable and necessary attorneys' fees and costs.

7 **SECOND CAUSE OF ACTION**

8 **Breach of Express Warranty**

9 113. Plaintiff repeats, re-alleges, and incorporates by reference, all other
10 paragraphs in this Amended Complaint as if set forth herein verbatim.

11 114. Defendants made an affirmation of fact or promise to Plaintiff, which
12 related to the goods and became part of the basis of the bargain.

13 115. Defendants likewise made a description of the goods, which was part of
14 the basis of the bargain.

15 116. An affirmation, promise, or description create an express warranty that
16 the goods shall conform to the affirmation, promise, or description.

17 117. Defendants breached that express warranty and Plaintiff is entitled to
18 damages.

19 118. In addition to the damages Plaintiff suffered as a result of this breach,
20 Plaintiff request this Court award Plaintiff's reasonable attorneys' fees pursuant to
21 Section 38.001 of the Texas Civil Practice and Remedies Code, as this action is based
22 on written contracts.

23 **THIRD CAUSE OF ACTION**

24 **Breach of Implied Warranty**

25 119. Plaintiff repeats, re-alleges, and incorporates by reference, all other
26 paragraphs in this Amended Complaint as if set forth herein verbatim.

27 120. Defendants sold products that were not fit for the ordinary purpose for
28 which such goods are used.

121. Defendants sold products that did not conform to the promises or affirmations of fact made on the Monroney Sticker.

122. Defendants breached the implied warranty of merchantability and Plaintiff is entitled to damages.

123. In addition to the damages Plaintiff suffered as a result of this breach, Plaintiff requests this Court award Plaintiff's reasonable attorneys' fees pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code, as this action is based on written contracts.

FOURTH CAUSE OF ACTION

Breach of Implied Warranty of Fitness for a Particular Purpose

124. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs in this Amended Complaint as if set forth herein verbatim.

125. Defendants had reason to know of the particular purpose for which the goods are required.

126. Plaintiff relied on Defendant's skill or judgment in selecting or furnishing suitable goods.

127. The goods were not fit for such purpose.

128. Defendants breached the implied warranty of fitness for a particular purpose and Plaintiff is entitled to damages.

129. In addition to the damages Plaintiff suffered as a result of this breach, Plaintiff requests this Court award Plaintiff's reasonable attorneys' fees pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code, as this action is based on written contracts.

FIFTH CAUSE OF ACTION

Breach of Contract

130. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs in this Amended Complaint as if set forth herein verbatim.

131. Valid, enforceable contracts existed for the sale of the Subject Vehicle

1 between Plaintiff and Defendants.

2 132. Defendants breached the contract by failing to provide the Subject
3 Vehicle in the condition promised.

4 133. As a result of Defendants' failure, Plaintiff has not received the benefit
5 of the contract that was entered into.

6 134. Accordingly, Plaintiff has suffered damages in the amount of the
7 purchase price, finance charges, and other fees charged for the Subject Vehicle
8 pursuant to the contract. Plaintiff requests compensatory and punitive damages in an
9 amount to be determined at trial.

10 135. In addition to the damages Plaintiff suffered as a result of this breach,
11 Plaintiff request this Court award Plaintiff's reasonable attorneys' fees pursuant to
12 Section 38.001 of the Texas Civil Practice and Remedies Code, as this action is based
13 on written contracts.

14 **SIXTH CAUSE OF ACTION**

15 **Fraud**

16 136. Plaintiff repeats, re-alleges, and incorporates by reference, all other
17 paragraphs in this Amended Complaint as if set forth herein verbatim.

18 137. Defendant made a material representations (as described above) about
19 the Subject Vehicle that were false.

20 138. Defendants knew the representations they made about the Subject
21 Vehicle (as described above) were false and/or made such representations recklessly
22 as a positive assertion without any knowledge of its truth.

23 139. Defendants intended to induce Plaintiff to act upon the representations
24 described in this Amended Complaint.

25 140. Plaintiff actually and justifiably relied on the representation described in
26 this Amended Complaint, which caused Plaintiff's damages.

27 141. Defendants are therefore liable for Plaintiff's damages.
28

1 **SEVENTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 142. Plaintiff repeats, re-alleges, and incorporates by reference, all other
4 paragraphs in this Amended Complaint as if set forth herein verbatim.

5 143. Defendants made representations about the Subject Vehicle in the course
6 of their business or in a transaction where they have a pecuniary interest.

7 144. Defendants supplied false information for the guidance of others in their
8 business transactions.

9 145. Defendants failed to exercise reasonable care or competence in obtaining
10 or communicating the information.

11 146. Plaintiff justifiably relied on said representation about the Subject
12 Vehicle.

13 147. Defendant's negligent misrepresentations about the Subject Vehicle
14 proximately caused Plaintiff's damages.

15 148. Defendants are therefore liable for Plaintiff's damages.

16 **REQUEST FOR JURY TRIAL**

17 149. Pursuant to the Seventh Amendment to the Constitution of the United
18 States of America, Plaintiff is entitled to, and demands, a trial by jury.

19 **CONDITIONS PRECEDENT**

20 150. All conditions precedent to Plaintiff's claims for relief have been
21 performed or have occurred.

22 **REQUEST FOR DISCLOSURE**

23 151. Pursuant to Tex. R. Civ. P. 194, Plaintiff requests that Defendant
24 disclose, within 50 days of the service of this request, the information or material
25 described in Rule 194.2.

26 **OPT OUT TIMELY FILED**

27 152. Plaintiff timely filed Plaintiff's Opt Out Notice dated August 30, 2016,
28 indicating Plaintiff's intent to be excluded from the Class Action Lawsuit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and Plaintiff be awarded damages from Defendants, as follows:

1. For incidental, consequential, and actual damages, according to proof at trial;
2. For statutory, exemplary, and punitive damages, according to proof at trial;
3. For rescission and repurchase of the Subject Vehicle and restitution of all monies expended;
4. For disgorgement of unjust enrichment;
5. For pre-judgment interest at the legal rate;
6. For reasonable attorneys' fees and costs of suit; and
7. For such other and further relief as the Court deems just and proper under the circumstance.

Date: May 28, 2020

KAZEROUNI LAW GROUP, APC

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